

The Senate Committee on Judiciary offered the following substitute to HB 311:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 21 of Title 50, Title 36, Part 1 of Article 3 of Chapter 3 of Title 23, and
2 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to waiver of
3 sovereign immunity as to actions ex contractu and state tort claims, local government,
4 conventional quia timet, and judgments and rulings deemed directly appealable, procedure
5 for review of judgments, orders, or decisions not subject to direct appeal, scope of review,
6 hearings in criminal cases involving a capital offense for which death penalty is sought, and
7 appeals involving nonmonetary judgments in child custody cases, respectively, so as to
8 provide for a limited waiver of sovereign immunity for declaratory or injunctive relief under
9 certain circumstances; to provide for definitions; to provide for exceptions; to provide for
10 immunity of state and local officers and employees in their individual capacity; to provide
11 for a waiver of sovereign immunity as to actions ex contractu for breach of written contract
12 to which a local government is a party; to provide for appeals; to provide for related matters;
13 to provide for applicability; to repeal conflicting laws; and for other purposes.

14 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

15 **PART I**
16 **SECTION 1-1.**

17 Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to waiver of
18 sovereign immunity as to actions ex contractu and state tort claims, is amended by adding
19 a new article to read as follows:

20 "ARTICLE 3

21 50-21-50.

22 As used in this article, the term:

23 (1) 'Governmental entity' means a department, agency, division, bureau, board,
24 commission, authority, office, or committee.

25 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
26 person who is:

- 27 (i) Elected to a state office;
28 (ii) Appointed to a state governmental entity; or
29 (iii) Employed by the state or a state governmental entity.

30 (B) Such term shall not include an independent contractor doing business with this
31 state or a state governmental entity.

32 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

33 (4) 'Person' means an individual, corporation, partnership, firm, business trust,
34 joint-stock company, association, syndicate, group, pool, joint venture, an unincorporated
35 association or group, a county, municipal corporation, consolidated government, and
36 school system, but such term shall not include a hospital authority, housing or other local
37 authority, or any other unit of local government.

38 (5) 'State' means the State of Georgia, but such term shall not include a county,
39 municipal corporation, consolidated government, school system, hospital authority,
40 housing or other local authority, or any other unit of local government.

41 (6) 'State mental health facility' shall have the same meaning as set forth in Code
42 Section 37-1-1.

43 (7) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
44 that is codified in the Official Code of Georgia Annotated or has become law.

45 (8) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

46 50-21-51.

47 (a) Sovereign immunity is waived as to any claim that is brought by an aggrieved person
48 in the courts of this state against this state, a state governmental entity, or an officer or
49 employee in his or her official capacity and that seeks declaratory or injunctive relief to
50 remedy an injury in fact caused to such aggrieved person, including, but not limited to, an
51 imminent threat of injury to such aggrieved person, by this state, a state governmental
52 entity, or an officer or employee in his or her official capacity in violation of a state statute,
53 the Constitution of Georgia, or the Constitution of the United States. This waiver extends
54 to any claim seeking declaratory or injunctive relief from the enforcement of a state statute
55 on the basis that the statute, on its face or as applied, violates the Constitution of Georgia
56 or the Constitution of the United States.

57 (b) This Code section shall not waive sovereign immunity of this state, a state
58 governmental entity, or an officer or employee in his or her official capacity as to any
59 claim:

- 60 (1) For which a state statute explicitly prohibits such waiver;
61 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
62 Code Section 9-15-14;
63 (3) Alleging a violation of federal law, other than the United States Constitution;
64 (4) Brought in a court of the United States; or
65 (5) Brought by, or on behalf of, an individual in a penal institution or a state mental
66 health facility.

67 50-21-52.

68 This article shall be narrowly construed and shall not:

- 69 (1) Toll or extend any applicable period of limitations;
70 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;
71 (3) Be construed to waive other immunities provided by state statute or recognized by
72 the courts of this state, including, but not limited to, grand juror immunity, judicial
73 immunity, legislative immunity, official immunity, prosecutorial immunity, or qualified
74 immunity; or
75 (4) Except as expressly waived by this article, alter or amend any other legal requirement
76 for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing,
77 exhaustion of administrative or other remedies, notice requirements, and defenses to or
78 limitations on the exercise of equitable jurisdiction.

79 50-21-53.

80 (a) In a suit for which sovereign immunity is waived under this article, an officer or
81 employee shall not be subject to such suit in his or her individual capacity for performance
82 or nonperformance of his or her official duties.

83 (b) The immunity conferred by subsection (a) of this Code section shall:

- 84 (1) Extend to such suit seeking relief, including, but not limited to, monetary,
85 declaratory, or injunctive relief, unless such suit against such officer or employee in his
86 or her individual capacity is expressly authorized by state statute; and
87 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
88 was ultra vires, unconstitutional, or illegal.

89 50-21-54.

90 A suit for which sovereign immunity is waived under this article shall name only the state,
91 a state governmental entity, an officer or employee in his or her official capacity, or a
92 combination thereof. If an officer or employee is named in such suit in his or her
93 individual capacity, upon proper motion, the court shall dismiss him or her as the party
94 defendant and, if appropriate, order such officer or employee in his or her official capacity
95 be joined as a party defendant.

96 50-21-55.

97 (a) No suit for which sovereign immunity is waived under this article shall be commenced,
98 and the court shall not have jurisdiction thereof, until 30 days after the date that a written
99 notice is sent to the state governmental entity or officer or employee to be named as a party
100 defendant and the Attorney General by certified mail, return receipt requested, by statutory
101 overnight delivery, or delivered personally to such entity and persons and obtaining a
102 receipt for such delivery. Such notice shall identify the specific law or action being
103 challenged and the nature of the relief being sought.

104 (b) No suit for which sovereign immunity is waived under this article shall proceed until
105 the plaintiff provides the court with proof of service upon the Attorney General or his or
106 her designee and the state governmental entity that is charged with enforcing the state
107 statute being challenged.

108 (c) A suit for which notice has been provided in accordance with this Code section shall
109 be filed no later than 90 days after such notice has been provided."

110 **PART II**
111 **SECTION 2-1.**

112 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
113 in Code Section 36-33-1, relating to a municipal corporation's immunity from liability for
114 damages and the waiver of immunity by the purchase of liability insurance, by adding a new
115 subsection to read as follows:

116 "(c) Sovereign immunity of a municipal corporation shall be waived as provided in
117 Article 2 of Chapter 80 of this title."

118 **SECTION 2-2.**

119 Said title is further amended in Chapter 80, relating to general provisions regarding
120 provisions applicable to counties, municipal corporations, and other governmental entities,

121 by designating the existing Code sections as Article 1 and adding a new article to read as
122 follows:

123 "ARTICLE 2

124 36-80-50.

125 As used in this article, the term:

126 (1) 'Governmental entity' means a department, agency, division, bureau, board,
127 commission, authority, office, or committee formed or established by a political
128 subdivision.

129 (2)(A) 'Officer or employee' means, whether with or without compensation, any natural
130 person who is:

131 (i) Elected to a political subdivision office;

132 (ii) Appointed to a political subdivision governmental entity; or

133 (iii) Employed by a political subdivision or a political subdivision governmental
134 entity.

135 (B) Such term shall not include an independent contractor doing business with this
136 state, a political subdivision, a state governmental entity, or a political subdivision
137 governmental entity.

138 (3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

139 (4) 'Person' shall have the same meaning as set forth in Code Section 50-21-50.

140 (5) 'Political subdivision' means a county, municipal corporation, or consolidated
141 government.

142 (6) 'Rule or regulation' shall have the same meaning as set forth in paragraph (6) of Code
143 Section 50-13-2.

144 (7) 'State' shall have the same meaning as set forth in Code Section 50-21-50.

145 (8) 'State mental health facility' shall have the same meaning as set forth in Code
146 Section 37-1-1.

147 (9) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof
148 that is codified in the Official Code of Georgia Annotated or has become law.

149 (10) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

150 36-80-51.

151 (a) Sovereign immunity is waived as to any claim that is brought by an aggrieved person
152 in the superior courts of this state against a political subdivision, a political subdivision
153 governmental entity, or an officer or employee in his or her official capacity and that seeks
154 declaratory or injunctive relief to:

155 (1) Challenge a local ordinance adopted by a political subdivision or a rule or policy
156 adopted by a political subdivision or a political subdivision governmental entity under the
157 Constitution of Georgia, the Constitution of the United States, a state statute, or rule or
158 regulation;

159 (2) Remedy an injury in fact caused to such aggrieved person, including, but not limited
160 to, an imminent threat of injury to such aggrieved person, by a political subdivision, a
161 political subdivision governmental entity, or an officer or employee in his or her official
162 capacity acting without lawful authority, beyond the scope of official power, or in
163 violation of the Constitution of Georgia, the Constitution of the United States, a state
164 statute, a rule or regulation, or a local ordinance of a political subdivision except a zoning
165 ordinance as defined in Code Section 36-66-3; or

166 (3) Remedy an injury when the injury is related to the award of a proposed agreement
167 with a political subdivision or an officer or employee in his or her official capacity. A
168 person who bid on such proposed agreement claiming an injury as described in
169 paragraph (2) of this subsection as to such award shall file suit for declaratory or
170 injunctive relief no later than ten days from the date that the award is made public. Any
171 agreement resulting from an award of a bid or proposal shall not be effective until the
172 expiration of ten days after the award is made public, except for emergencies as defined
173 in Code Section 36-91-2.

174 (b) This Code section shall not waive sovereign immunity of a political subdivision, a
175 political subdivision governmental entity, or an officer or employee in his or her official
176 capacity as to any claim:

177 (1) For which a state statute explicitly prohibits such waiver;
178 (2) For monetary relief, attorney's fees, or expenses of litigation except as provided in
179 Code Section 9-15-14;
180 (3) Alleging a violation of federal law, other than the United States Constitution;
181 (4) Brought in a court of the United States; or
182 (5) Brought by, or on behalf of, an individual in a penal institution or a state mental
183 health facility.

184 36-80-52.

185 This article shall be narrowly construed and shall not:

186 (1) Toll or extend any applicable period of limitations;
187 (2) Alter or amend any other waiver of sovereign immunity provided by state statute;
188 (3) Be construed to waive other immunities provided by state statute or recognized by
189 the courts of this state, including, but not limited to, grand juror immunity, judicial

190 immunity, legislative immunity, official immunity, prosecutorial immunity, or qualified
191 immunity; or

192 (4) Except as expressly waived by this article, alter or amend any other legal requirement
193 for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing,
194 exhaustion of administrative or other remedies, notice requirements, and defenses to or
195 limitations on the exercise of equitable jurisdiction.

196 36-80-53.

197 (a) In a suit for which sovereign immunity is waived under this article, an officer or
198 employee shall not be subject to such suit in his or her individual capacity for performance
199 or nonperformance of his or her official duties.

200 (b) The immunity conferred by subsection (a) of this Code section shall:

201 (1) Extend to such suit seeking relief, including, but not limited to, monetary,
202 declaratory, or injunctive relief, unless such suit against such officer or employee in his
203 or her individual capacity is expressly authorized by state statute; and

204 (2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct
205 was ultra vires, unconstitutional, or illegal.

206 36-80-54.

207 A suit for which sovereign immunity is waived under this article shall name only the
208 political subdivision, a political subdivision governmental entity, an officer or employee
209 in his or her official capacity, or a combination thereof. If an officer or employee is named
210 in such suit in his or her individual capacity, upon proper motion, the court shall dismiss
211 him or her as the party defendant and, if appropriate, order such officer or employee in his
212 or her official capacity be joined as a party defendant.

213 36-80-55.

214 (a) No suit for which sovereign immunity is waived under this article against a political
215 subdivision, a political subdivision governmental entity, or an officer or employee in his
216 or her official capacity as provided in Code Section 36-80-51 shall be commenced, and the
217 courts of this state shall not have jurisdiction thereof, until 30 days after the date that a
218 written notice is mailed by certified mail, return receipt requested, or by statutory overnight
219 delivery to:

220 (1) The sole county commissioner or chairperson of the county commission, as the case
221 may be, in the case of a county; or

222 (2) The mayor or chairperson of the city council or city commission, as the case may be,
223 in the case of a municipal corporation or consolidated government.

224 (b) Such notice shall identify the action being challenged pursuant to this article and the
225 nature of the relief being sought.

226 (c) No suit containing a claim under Code Section 36-80-51 shall proceed in the courts of
227 this state until the plaintiff provides the court with proof of service upon the appropriate
228 authority as provided in this Code section.

229 (d) The notice required by this Code section shall not be required for suits brought
230 pursuant to paragraph (3) of subsection (a) of Code Section 36-80-51.

231 (e) A suit for which notice has been provided in accordance with this Code section shall
232 be filed no later than 90 days after such notice has been provided.

233 36-80-56.

234 Sovereign immunity of a political subdivision as defined in Code Section 36-80-50, a
235 political subdivision governmental entity as defined in Code Section 36-80-50, or an officer
236 or employee as defined in Code Section 36-80-50 in his or her official capacity is hereby
237 waived as to any claim in ex contractu for the breach of a written agreement with a political
238 subdivision, a political subdivision governmental entity, or an officer or employee in his
239 or her official capacity and only as between the parties to such written agreement."

PART III

SECTION 3-1.

242 Part 1 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated,
243 relating to conventional quia timet, is amended by revising Code Section 23-3-41, relating
244 to when relief is granted and costs, as follows:

245 "23-3-41.

246 (a) In all proceedings quia timet or proceedings to remove clouds upon titles to real estate,
247 if a proper case is made, the relief sought shall be granted to any complainant irrespective
248 of whether the invalidity of the instrument sought to be canceled appears upon the face of
249 the instrument or whether the invalidity appears or arises solely from facts outside of the
250 instrument.

251 (b) In Except as provided in Code Section 23-3-45, in such cases the costs shall be taxed
252 against the litigants in the discretion of the court."

SECTION 3-2.

253 Said part is further amended by adding new Code sections to read as follows:

255 "23-3-45.

The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party claim brought in the courts of this state by an aggrieved person seeking a declaratory judgment or injunctive relief under this part; provided, however, that sovereign immunity is not waived as to any claim for monetary relief, attorney's fees, or expenses of litigation that are included in or related to such claim, counterclaim, cross-claim, or third-party claim, except as provided in Code Section 9-15-14.

262 23-3-46.

263 Notwithstanding any law to the contrary, a proceeding under this part involving title to
264 property or an instrument held by the state or any department, agency, commission, board,
265 authority, or entity thereof shall also be served on such department, agency, commission,
266 board, authority, or entity and the Attorney General. When the Attorney General does not
267 file a responsive pleading to an action filed pursuant to this part, the court shall accept this
268 state's acquiescence to the petitioner's claim for relief."

PART IV

SECTION 4-1.

Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and rulings deemed directly appealable, procedure for review of judgments, orders, or decisions not subject to direct appeal, scope of review, hearings in criminal cases involving a capital offense for which death penalty is sought, and appeals involving nonmonetary judgments in child custody cases, is amended in subsection (a) by deleting "and" at the end of paragraph (12), by replacing the period with "; and" at the end of paragraph (13), and by adding a new paragraph to read as follows:

278 "(14) All judgments, orders, or rulings denying or refusing to grant immunity to one or
279 more parties based upon sovereign, official, qualified, or any other immunity established
280 by the United States Constitution or the Constitution, laws, or common law of this state
281 when such party or parties are the state, state governmental entities, political
282 subdivisions, political subdivision governmental entities, or officers or employees as such
283 are defined in Code Section 36-80-50 or 50-21-50, as applicable; provided, however, that
284 the right of direct appeal under this paragraph shall not be exercised by any one party
285 more than once in a case. This paragraph shall not preclude taking an appeal pursuant
286 to any other paragraph in this subsection."

287

PART V

288

SECTION 5-1.

289 This Act shall apply to causes of action accruing on or after July 1, 2019.

290

SECTION 5-2.

291 All laws and parts of laws in conflict with this Act are repealed.